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September 8, 2004

Via Electronic Mail and Overnight Delivery

Mary L. Cottrell, Secretary
Department of Telecommunications & Energy
Commonwealth of Massachusetts
One South Station, Second Floor
Boston, MA 02110

Re: DTE 04-33 – Reply Comments of Choice One in the Proceeding on Verizon's Petition for Arbitration

Dear Secretary Cottrell:

Choice One Communications of Massachusetts Inc. (Choice One") hereby offers these reply comments in accordance with the August 23, 2004 Memorandum of Arbitrator Chin of the Massachusetts Department of Telecommunications and Energy ("Department") in the above-referenced proceeding.

By way of background, Verizon sought to initiate this proceeding by petitioning the Department on February 20, 2004 to arbitrate changes to its interconnection agreement with Choice One, among other Massachusetts carriers. Choice One responded to Verizon's arbitration petition as part of a group of competitive local exchange carriers ("CLECs") on March 16, 2004. In the midst of the proceeding, Verizon filed its Notice of Withdrawal as to Certain Parties on August 20, 2004 ("Withdrawal Notice") in an attempt to exclude scores of CLECs, such as Choice One, based on its revised interpretation of our respective interconnection agreements. The Hearing Examiner then instructed parties to file comments and reply comments to address the Withdrawal Notice, as well as the impact of the FCC's Interim Rules on the arbitration proceeding more generally. Choice One and Verizon each filed comments on September 1, 2004.

In both its Withdrawal Notice and its Comments, Verizon purports to be able to discontinue unilaterally the provision to CLECs of network elements that are no longer subject to the unbundling obligations of Section 251(c)(3) of the Federal Telecom Act ("Act"), 47 U.S.C. sec. 251(c)(3), based upon its understanding of an affected CLEC's interconnection agreement. *See* Verizon's Comments at 4. Choice One disagrees with Verizon's contention that it can unilaterally cease provisioning UNEs under our interconnection agreement, and notes that Verizon has all but ignored applicable state and federal law in its haste to remove parties from an arbitration it initiated.

Even if Verizon were correct in the assertion that the "change of law" provisions of its interconnection agreements permit it to discontinue Section 251UNEs upon notice (and without negotiating an amendment thereto), Verizon ignores the fact that its unbundling obligations in Massachusetts arise from a variety of additional and independent legal sources. In section 1.1.39 of Choice One's interconnection agreement with Verizon, the definition of "'Law' means any statute, rule, regulation, applicable court ruling or FCC or [DTE] decision, order or ruling." Significantly, "law" is not restricted to section 251(c)(3) of the Act or the FCC's implementing rules thereof, but includes "any" other federal and state statutes, rules, and regulations. Thus, for

Verizon's interpretation of its unbundling obligations to hold true, which it surely does not, it erroneously assumes that neither section 271, nor the *Bell Atlantic/GTE Merger Conditions*, nor any other state law obligations exist to compel Verizon to open its network to competition.

As the Department may be aware, the Chief Counsel of the Pennsylvania Public Utility Commission recently opined that multiple sources of applicable law -- in addition to section 251 of the Act -- govern Verizon's unbundling obligations, and that these legal obligations include section 271, state law and merger conditions. The Chief Counsel warned that "Verizon should refrain from undertaking unilateral action based on its interpretation of its interconnection agreements" until the conclusion of the pending dockets (including Pennsylvania's consolidated arbitration proceeding) and until there is greater certainty as to the scope of Verizon's unbundling obligations.[1] Indeed, as the scope of Verizon's legal obligations become clearer, this arbitration proceeding is an appropriate forum to ensure that Verizon abides by all of its requirements to unbundle network elements pursuant to its interconnection agreements in Massachusetts and, further, that those legal obligations (benefits and burdens) are fairly captured.

Verizon may have arguably had a basis for withdrawing its arbitration petition before Choice One and other CLECs responded to the petition. However, by filing an answer and identifying additional issues to be resolved, those responses are the equivalent of counter-petitions for arbitration (to the extent that a CLEC wishes to remain a party to this arbitration). Verizon may not unilaterally move to dismiss the arbitration as to those CLECs now. To do so would deny CLECs the opportunity to be heard and result in a complete waste of the time and resources each CLEC has already expended. Moreover, if Choice One is dismissed from the arbitration, matters that would have precedential effect on CLECs generally, including Choice One, may be resolved without consideration of Choice One's views. Further, dismissal of Choice One would reduce the economies of participating in a consolidated arbitration.

Accordingly, Choice One urges the Department to reject Verizon's Withdrawal Notice and to determine that Verizon cannot unilaterally dismiss Choice One from this arbitration proceeding. And, as set forth in Choice One's comments, the Department should hold open this proceeding until such time as permanent rules are issued by the FCC.

Respectfully Submitted,

/--s--/
D. Anthony Mastando

Cc: Active Parties (via e-mail)

[1] Letter of Chief Counsel Bohdan R. Pankiw of the Pennsylvania Public Utility Commission to Julia A. Conover, Vice President & General Counsel - Pa. & Del, Verizon, dated August 30, 2004, in *Re: Pennsylvania Public Utility Commission v. Verizon Pennsylvania Inc. Tariff No. 216, Revisions regarding Four Line Carve-Out; Revisions regarding Switching, Transport and Platform for High Capacity Loops, Nos. R-00049524, R-00049525.*